IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2007

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.16921 of 2006(T)
(OA No.6814/93)

P.Pillai Tamil Sangu ... Petitioner

vs

1. The Director of Sericulture,
   Salem 1.

2. Government of Tamil Nadu,
   rep. by its Secretary,
   Department of Rural
   Industries,
   Fort St.George, Madras 9. ... Respondents

This petition came to be numbered by transfer of O.A. No.6814 of 1993 from the file of the Tamil Nadu Administrative Tribunal praying for a writ of certiorarified mandamus to call for the records in impugned proceedings Na.Ka.No.15296/PA5/91 dated 10.8.1993 on the file of the first respondent herein and quash the same and direct the first respondent herein to sanction the consequential benefits.

For Petitioner ... Mr.S.Sadasharam

For Respondents ... Mrs.Lita Srinivasan,G.A.

ORDER

The petitioner has filed the Original Application No.6814 of 1993 on the file of the Tamil Nadu Administrative Tribunal praying for a writ of certiorarified mandamus, to call for the records in impugned proceedings Na.Ka.No.15296/PA5/91 dated 10.8.1993, on the file of the first respondent herein and quash the same and direct the first respondent herein to sanction the consequential benefits, and the same has been transferred to the file of this Court and renumbered as W.P.No.16921 of 2006.

2. Brief facts of the case are as follows:
The petitioner has challenged the order of the Director of

Sericulture, Salem, dated 10.08.1993 by which the petitioner was dismissed from service. The petitioner was directly recruited as an Assistant Supervisor of Industrial Co-operative Society on 24.02.1983. When he was working as Assistant Supervisor/Secretary of Thirumangalam Industrial Co-operative Society between 05.06.1985 and 10.09.1987, a charge memo dated 04.08.1988 was issued under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules alleging dereliction of duty, temporary mis-appropriation causing wrongful loss to the first respondent, Directorate. On receipt of the charge memo, the petitioner submitted his explanation dated 11.10.1988 denying the charges levelled against him. Thereafter, the first respondent, by order dated 09.06.1989 appointed the Joint Director of Sericulture as an Enquiry Officer to enquire into the charges levelled against the petitioner. Accordingly, the Enquiry Officer conducted an enquiry into the matter and submitted his report dated 04.11.1992 to the disciplinary authority. The Enquiry Officer did not examine any witness on behalf of the Department to establish the charges levelled against the petitioner and no documents were marked on behalf of the Department.

3. The petitioner has further submitted that the Enquiry Officer found certain charges as not proved and some charges as partially proved. A copy of the Enquiry Report was furnished to the petitioner on 13.11.1992, for which the petitioner submitted a detailed representation on 28.12.1992 repudiating the finding of the Enquiry Officer and further requested the disciplinary authority, namely, the first respondent to relieve him of the charges. On receipt of the further representation, the first respondent, by order dated 10.05.1993, directed the petitioner to appear before him for a personal hearing in connection with the finalisation of the charges under Rule 17(b) of the Tamil Nadu civil Services (Classification, Control and Appeal) Rules. The said notice dated 10.05.1993 was challenged by way of Original Application in O.A.No.5659 of 1993. During the pendency of the said Original Application, the first respondent by order dated 10.08.1993, dismissed the petitioner from service. Aggrieved by the same, the petitioner has filed the present Original Application, which has been subsequently transferred to the file of this Court and renumbered as Writ Petition.

4. Though the petitioner has raised several grounds in the writ petition, learned counsel for the petitioner confined his submissions to only one ground, namely, that the disciplinary authority while disagreeing with the findings of the Enquiry Officer, ought to have given sufficient notice to the petitioner so as to enable him to put forth his explanation on the findings arrived at by the disciplinary authority. He submitted that inasmuch as there is violation of principles of natural justice and considering the fact the disciplinary proceedings were

initiated in 1988, the Court may set aside the impugned order of penalty and direct reinstatement of the petitioner in services and that the petitioner is also willing to forego the entire backwages and other attendant benefits. In support of his contention, learned counsel for the petitioner cited the judgment of the Supreme Court in *Lav Nigam vs. Chairman & Md. ITI Ltd. and another* reported in *2006(9)SCC 440.*

5. In support of his contention, learned counsel for the petitioner drew the attention of this Court to paragraph No.13 of the counter affidavit, wherein the respondents have admitted that there are no provisions in Classification, Control and Appeal Rules to inform the delinquent Government Servant when the disciplinary authority differs with the findings of the Enquiry Officer. After extracting the relevant passages from the decisions reported in *1998(7)SCC 84 [Punjab National Bank vs. Kunj Behari Misra]* and *1999(7)SCC 739 [Yoginath D.Bagde vs. State of Maharashtra]*, the Supreme Court at paragraph No.10 of the case law cited by the petitioner, held as follows:

> "The conclusion of the High Court was contrary to the consistent view taken by this Court without any case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed."

6. Mrs.Lita Srinivasan, learned Government Advocate submitted that the procedure has been properly followed, before inflicting the penalty and considering the gravity of charges, the Court need not interfere with the impugned order.

7. Heard the counsel appearing for the parties and perused the material records.

8. In view of the settled position of law, the impugned order of dismissal from service suffers from procedural irregularity. Whenever the disciplinary authority disagrees with the findings of the Enquiry Officer, the delinquent is entitled to a prior notice containing the reasons of disagreement, so as to enable the charged official to put forth his representation/explanation to the findings arrived at by the disciplinary authority. It is brought to the notice of this Court that during the pendency of the disciplinary proceedings, the petitioner was working. In view of the above, the impugned order dated 10.08.1983 dismissing the petitioner from service is set aside and the disciplinary

proceedings shall be recommenced from the stage of the issuance of the notice by the disciplinary authority indicating the reasons for disagreement with the findings of the Enquiry Officer, within a period of three weeks from the date of receipt of the copy of this order. On receipt of such notice, the petitioner shall submit his explanation/representation and appropriate orders may be passed on merits and in accordance with law. With the above directions, the writ petition is disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gms

To

1. The Director of Sericulture,
   Salem 1.

2. The Secretary,
   Government of Tamil Nadu,
   Department of Rural Industries,
   Fort St.George, Madras 9.

+1cc to Mr.S.Sadasharam,Advocate Sr 54971
+1cc to Govt. Pleader Sr 55384

LA (CO)
km/4.10.

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